

# Blue Ribbon Panel on Ergonomics

April 3, 2001

Seattle Marriott Hotel Seatac

Members Present: Pat Tyson, Gwen Malone, Jim Merchant, Jim McCauley, Susan Schurman, Lee Anne Jillings, David Wegman, William Andersen, Claude Golden, Larry Bindner

Members Absent: Stewart Burkhammer

L&I Staff: Gary Moore, Michael Silverstein, Anne Soiza, Gayle Wilde, David Jansen, Ken Mettler, Mark Soltow

Governor's Staff: Jamila Thomas-Roberts

Guests: Butch Adams, Mark Johnson, Gary Smith, Tim Attebery, James Sells

Recorder: Jenifer Jellison

## **Introductions:**

### **❖ Welcome by Claude Golden and Larry Bindner, Co-Chairs**

Larry and Claude welcomed panel members. Panel members, staff, and guests introduced themselves and gave a brief description of their experience in ergonomics.

### **❖ Welcome by Gary Moore**

Director Moore extended his thanks to Larry and Claude for agreeing to be co-chairs of this panel and to the panel members as their work is very important to the department.

Director Moore explained that L&I has responsibility for safety and health programs and the workers' compensation program. The department is unique in that its workers' compensation program has an exclusive state fund, with an accident fund for time loss and a medical treatment fund -- paid into 50/50 by employers/employees. L&I processes 50,000 work-related musculoskeletal disorder (WMSD) claims each year.

Gary also gave highlights of the ergonomics regulation that resulted from the work of two advisory committees and numerous public hearings. Some of these highlights include: a long phase-in period to allow for ample opportunity for implementation, a focus on prevention rather than injury, and a firewall between the workers' compensation program and the ergonomics regulation. While L&I was able to resolve many of the concerns brought forward by business, Governor Locke also mandated that a Blue Ribbon Panel be formed to assess whether certain criteria have been met by the department before the rule is enforced.

The department is willing to provide anything the Blue Ribbon Panel needs to accomplish this task.

### **❖ General History, Review of the Regulation**

Michael Silverstein gave a summary of the history of L&I's ergonomics regulation.

- ❖ In 1998, L&I decided to engage in rulemaking. Because:
  - ❖ WMSD's are among the most common and costly injuries
    - ❖ WMSD's cost \$410 million a year in direct costs
    - ❖ When productivity and quality impacts are added in, the costs increase to over \$1 billion
  - ❖ Strong evidence exists that workers are exposed to preventable risk factors

- ❖ L&I had already engaged in ten+ years of studies and training programs. While those activities had been useful, they were not sufficient to deal with the problems. Although injury numbers had been dropping, WMSD's were still at a higher proportion.
- ❖ Surveyed 5,000 employers. Of the 85% that responded, 60% reported no efforts to prevent WMSD's; 40% of those that recognized they had a problem with WMSD's took some measures.
- ❖ L&I already had a general rule in place that could be interpreted to impose some duty to prevent these injuries, but L&I decided to go through the public review and comment process to develop specific rules to set clear expectations for employers.
- ❖ The rulemaking process began in October 1998
  - ❖ Nine public meetings were held in seven cities. At this time, L&I had no proposal in mind but wanted to find out how the public felt about the issue. Five questions were posed:
    - ❖ What ideas do you have about how the rule might work?
    - ❖ What measures have worked? Not worked?
    - ❖ What kinds of requirements would be appropriate to put in the rule?
    - ❖ How flexible does it need to be to meet the needs of different industries?
    - ❖ What are small business needs?
  - ❖ Needs identified through public meetings:
    - ❖ Any rule should be flexible: not one size fits all
    - ❖ Should not require anything that isn't technological or economically feasible
    - ❖ Address small business concerns
    - ❖ Provide for employee involvement
    - ❖ Keep paperwork to a minimum
  - ❖ For the rule to be good public policy:
    - ❖ Employers should be able to easily know if they are covered.
  - ❖ L&I established an advisory committee:
    - ❖ For seven months, at each meeting, L&I would present an option paper with a full range of views. Through this process L&I identified key ideas:
      - ❖ The ergonomics rule should:
        - ❖ Be short and written more clearly than other safety and health rules
        - ❖ Be based on the principle of prevention
        - ❖ Make hazards that cause non-traumatic WMSDs (not trips/falls/slips/motor vehicle accidents) eliminated or reduced
        - ❖ Keep ergo separate from workers' compensation and medical management
        - ❖ Require employee involvement
        - ❖ Understand that in many workplaces, there are minor risks or no risks; need few or no requirements for employers with few risks
        - ❖ Take into account that finding a solution would take time
        - ❖ Education requirements need to take into account how workers move through the employment system -- basic education needed to be portable
        - ❖ Keep record keeping paperwork be kept to a minimum
        - ❖ Recognize that some employers had preexisting programs
        - ❖ Allow a long implementation period
        - ❖ Provide safe harbors
        - ❖ Provide L&I staff with uniform training to do a better job
        - ❖ Provide small business resources... balance specific requirements and have flexible choices
    - ❖ Developed a proposal that included the key principles. Took this proposal to formal public hearings in seven cities. Two hundred forty-nine witnesses testified and 850 post-hearing comments were received. As a result, changes were made to the proposal.
    - ❖ Ergonomics rule was adopted on May 26, 2000. L&I feels they have a sound, fair, flexible, and feasible rule which will result in the reduction of injuries and also meet employers' need to know what to do in order to comply.
    - ❖ July 1, 2002 is the first enforcement date.

Q: Jim McCauley: What are you doing to train inspectors?

A: L&I has provided basic information to a large number of staff on the requirements of the rule, and they have begun a more detailed training. There are also plans over the next year, to provide more technical training to staff on what the rule means and how to present it to employers. A clear set of policies and procedures on how the rule is to be enforced are also being produced. Consistency is important to L&I -- inspectors from different areas will conduct and answer questions in the same way. In making sure that these policies are understandable, they are working with business and labor to test them in the workplace.

Q: Lee Anne Jillings: What is the interest of the state legislature in the rule?

A: There have been a couple of bills regarding ergonomics in the Legislature. One has been passed by the Senate and is currently in the House. This bill would delay implementation by at least two years and require the department to conduct a lengthy series of pilot demonstration projects, studies in a range of industries, alternative ways to deal with ergonomics and oversight by one of the state regulating committees -- Joint Legislative Audit and Review Committee ( JLARC).

Q: David Wegman: What employees are not covered?

A: All employers under WISHA jurisdiction are covered including construction, agriculture, and maritime; self-employed and federal employers are not.

❖ **Review of Charge/ Process Rules—Claude Golden and Larry Bindner**

- ❖ Process rules and how the panel will be run:
  - ❖ Panel sets agenda
  - ❖ The panel will use consensus decision making.
  - ❖ Goal is to issue a report addressing the four points given in the May 25, 2000, letter from the Governor and whether the criteria have been met.
    - ❖ Demonstration projects have been successful
    - ❖ Effective education materials are widely available
    - ❖ The requirements are understandable
    - ❖ Enforcement policies and procedures are fair and consistent
- ❖ Panel discussed how to focus in on specific issues after initial meeting.

Q: David Wegman: Do we have time to share consensus on defining terms such as successful, clear, etc?

Q: Jim Merchant: What database are we to use in making a decision? On what basis are we to draw a conclusion in an objective fashion that is representative of what is going on in Washington State? We need to talk more about that.

Brainstorming ensued regarding above questions. Claude reiterated that the panel needs to stay focused on the four priorities. A suggestion was put forth that the Governor's Safety and Health Conference might be a good venue to get different points of view. Even if the entire panel couldn't make it to this conference, representatives could attend and report their findings back to the panel.

Q: Lee Anne Jillings: What is the status of the grants?

A: L&I has a request in the budget for \$5 million to be made available in the form of technical assistance grants.

- ❖ General Discussion: How can the panel make best use of the time they have? Does the panel prefer one or two day meetings?
  - ❖ Consensus of the panel is for two-day meetings. Start late morning - early afternoon the first day and start early morning the next day, ending late morning or early afternoon. This would allow those flying in to arrive that morning and fly out the next day.

Sue Schurman suggested having subcommittees to split up the work.

- ❖ Report
  - ❖ No set date report is due but want to get report out as soon as possible
- ❖ Meetings – General format
  - ❖ Schedule presentations early

❖ Discussion in afternoon

❖ **“Start with the Basics” presentation by Mark Soltow, L&I Regional Industrial Hygienist**

**Questions, after Mark’s presentation, are as follows:**

Q: Public: No recordkeeping? How does Employer B know that Employer A has provided ergo training when an employee moves from employer to employer?

A: By asking questions during the hiring interview, an employer can check to see if an employee has the knowledge base to suggest ergo training.

Q: How will inspectors deal with non-fixed workstations?

A: They will look at activities, how much time they spend at those activities, intensity and severity of risk factors.

Q: Gwen Malone: How will you check on compliance between employers? If an employee doesn’t remember ergonomics training, is an employer required to provide it?

A: If Employer A can verify that the employee completed training – that will suffice.

Q: Lee Anne Jillings: What percent of these employees have English as a second language?

A: L&I does not know at this time; however, we recognize that Washington has a diverse population with many languages, and that these materials will need to be printed in different languages.

Q: William Andersen: Regarding settings for hazard zone, caution zone, how much consensus is involved in setting specific standard settings? What confidence do you have that the levels have been set correctly?

A: Staff working on the development of rule studied types of exposure and used data from the literature. Public input was obtained through the rule development process.

❖ **Outreach Efforts to Date – Anne Soiza**

- ❖ Anne briefly outlined the various areas of ergonomics outreach L&I is currently involved in. A multitude of delivery methods are being used to ensure awareness of the ergonomics rule and the availability of help through L&I.
  - ❖ Consultation services are up and running.
  - ❖ Over 65 staff have been involved in outreach efforts to all industries.
  - ❖ News articles regarding ergonomics from the first four months of this year were highlighted. James McCauley asked if there were other articles available that offered a different perspective than the department’s. Anne responded that the packet of articles provided contained every article regardless of content that we are aware of.
  - ❖ In an effort to reach a wide variety of employers, L&I included an insert in this quarter’s billing for industrial insurance premiums.
  - ❖ L&I also has Internet resources available that are updated regularly.
  - ❖ The Safety and Health Video Library, one of the largest in the country, has been expanding its inventory on ergonomics videos.
  - ❖ Last year, the Governor’s Safety and Health Conference held an ergonomics forum.
  - ❖ Ergonomics publications are being updated, awareness letters are being sent, and phone calls made to Chambers’ of Commerce, business associations, and labor groups around the state.
  - ❖ Speeches are being given at business and labor education meetings.
  - ❖ L&I has been targeting the top 12 industries with information packets, letters from the regions and phone calls being made to the first affected employers (approx. 600), and industry-specific workshops are being developed.
  - ❖ Workshops and presentations up and running are:
    - “Start with the Basics” – since December 2000
    - “Implementing Ergo for Employers” – since late January (hands-on case study workshop)
    - “Office Ergonomics” workshop – an older workshop revised to meet criteria for the rule
  - ❖ Anne provided an executive summary of the workshop evaluation results. L&I is still in the beginning stages of workshops, and the summary only gives an indication of how they are doing (not enough evaluations received for effective measurement).
  - ❖ Registration is available by Internet – confirmation by mail to attendees.
  - ❖ Workshops are currently at capacity; more workshops are continuously being added.
  - ❖ Ergonomics workshop flyers are being updated every quarter.

Q: David Wegman: Estimating the number of top 12 attendees -- who is attending these workshops? When will you know that you have reached someone in the top 12?

A: We're getting the data from the sign-up sheets of those who attend.

Q: David Wegman: Of the 600 top employers, you check them off as you get them into a class?

A: Our goal is to assure that we have multiple contacts with each of those 600 employers.

Q: David Wegman: How many employers in the top 12 are in the second wave?

A: Approximately 8,000.

Anne indicated that the evaluations received from the workshops are being collected. They are very interested in the handwritten comments, which they are collecting in a database. L&I wants to know what tools employers are asking for to help them comply with the rule.

❖ Compliance tools

- ❖ Employee awareness education package -- this package satisfies the mandatory education package described in the rule. It was developed by the Toolbox Committee and can be completed in under an hour.
- ❖ A lifting calculator is a new Internet tool available that gives advice with the results.
- ❖ Future plans include placing the Employee Awareness education package on the Internet in a way that tracks who goes through the "class" and provides a validation certificate. L&I hopes to help employers check to see if an employee has completed the course.

Q: Pat Tyson: Is there a test component?

A: Yes. There has not been a decision on whether to issue a certificate of completion if failed. This course is more about whether or not they have completed the training. The policy at this time is that if they get through it, and attempt each question, they will receive a certificate.

Q: Pat Tyson: What about language issues?

A: L&I is working on a Spanish version and will do other languages if data shows a need.

Q: Lee Anne Jillings: Workshops range from two to four hours long. What is the difference?

A: There is no difference in terms of guiding content. The longer version (the second level) is geared toward employers ready to begin implementation.

❖ Other tools

- ❖ Updating publications.
- ❖ Creating industry-specific workshops for the top 12 industries.
- ❖ Expand information and provide tool vibration values on the Internet.
- ❖ \$5 million has been requested for technical assistance grants to be awarded to employer and employee groups

Q: William Anderson: What has been the general reaction of the people you've been dealing with?

A: Indications are that attendees are walking out knowing more than when they came in. They are able to identify caution zone jobs and how to contact L&I staff for help. We are still very early in the process, but overall the response has been positive.

Q: Lee Anne Jillings: Is the content in these workshops meeting participants' expectations? How could they be strengthened?

A: Participants want more solutions in the two-hour class. The two-hour class is just information on the rule so we've encouraged them to come to our four-hour workshop. The four-hour class discusses in depth the solutions found thus far, and the content will be changed over time as demonstration projects are done. We are also placing solutions on the Internet.

Q: Will the two-hour workshop be shelved as time goes on?

A: It may be revised but not for at least the next five years. It is Step A.

❖ Demonstration Projects – David Jansen

- ❖ Demonstration projects so far have spent a lot of time on risk factor identification. Other topics e.g. demonstration projects have been testing pieces of equipment and ways to implement the rule -- generate best practices.
- ❖ L&I is confident that solutions are out there.
- ❖ Results from a demonstration project (Alaska Air) were shared.
- ❖ Ten of the top 12 industries have demonstration projects, and we're in negotiation with the last two industries.

Q: David Wegman: Participants means companies?

A: Yes, but not more than one person from each firm or association.

Q: Gwen Malone: How was it determined what the demonstration projects were going to do? Do employers propose them or does L&I?

A: Both. In some cases employers came to us interested in finding solutions, and we have also sought out employers.

David Wegman and Susan Schurman asked about the demonstration project strategy. What are demonstration projects intended to accomplish?

- ❖ Michael Silverstein added some comments to the earlier discussion regarding demonstration projects and said that he intended to have answers to their questions well before the next panel meeting. This information will include demonstration project objectives and strategies. This should aid the panel in determining whether or not projects are accomplishing their intended objectives.

L&I did receive a Centers for Disease Control (CDC) award, in partnership with the University of Washington, to determine the effectiveness of the rule including demonstration projects over a three-year period.

He also reiterated that L&I is at the very early stage of a 10-15 year process of moving the state ahead in controlling hazards which contribute to WMSDs but that we are on schedule.

❖ **Ken Mettler, L&I Field Services Ergonomic Program Manager**

- ❖ Ken is responsible for building field forces capacity to meet the demand for ergonomic consultations in implementing the rule. Consultation definition from standpoint of the rule is to provide assistance and instruction to employers to determine if they have any hazards in their workplace and, if so, provide assistance on how to resolve them.
- ❖ When conducting a consultation there is a standard process. The opening conference clearly identifies and establishes the purpose of the consultation and what they expect from it. At the end of the consultation, staff conduct a closing conference which explains what the preliminary results were, solutions, followed by a written report to be received within 15 days.
- ❖ Sixty-eight staff have already received basic training. Requests for consultations have been few. Up until this point, the focus has been on education and outreach.
- ❖ Targeting top twelve industries.

Q: Lee Anne Jillings: Is education and outreach a subpart of Anne's group?

A: Regional staff do presentations while Anne's group provides the overall umbrella.

Q: David Wegman: How are you transmitting ergo expertise so that a consultant on his own in the field can give the necessary guidance that an employer needs? How is staff prepared to do a quality job?

A: We began with 2.5 days of training by staff ergonomists in general rule application, followed by ongoing eight-hour in-service training. It is important to understand that the rule does not require that it would take an ergonomist to do this work. Our consultants/compliance staff should be able to go out and use the tools they're given to determine whether a job falls into a caution zone. It is important that we recognize that the work they do can be done on a basic, simple level.

Q: William Andersen: What is the difference between demonstration projects and consultations?

A: A demonstration project is going to be longer term as opposed to a single consultative visit. Demonstration projects look at a much larger scale, e.g., a wide variety of risk factors and solutions.

Consultations are confidential and are treated as such and are basic, routine services provided upon request for any rule adopted.

Q: William Andersen: A consultation is requested by the company?

A: Yes. Also, ergonomics may be only part of a safety and health consultation, whereas an ergonomics demonstration project focuses only on ergonomics issues.

Q: William Andersen: The Governor's letter mandates fair and consistent enforcement -- is there an interest in how efficient it is and if it's doing any good?

A: We are very interested in the effectiveness in enforcing the rule which is why we pursued the CDC grant.

## ❖ Public Comment

- ❖ Gary Smith introduced himself as representing the Independent Business Association (IBA) whose primary clients are small businesses. He has been involved with ergonomics for quite a while.

The IBA strongly suggested that L&I adopt the first part of the rule, but didn't feel they were ready to adopt the second part of the rule. Gary wanted to make it clear that his members are not opposed to reducing WMSD's. They have four key reasons for wanting to do so: injuries increase their costs, lost productivity, additional training costs for replacement workers and not wanting employees to get hurt. However, they question the methods being used by L&I to achieve a reduction in WMSD's.

The court is still out on demonstration projects and it is critical to note where they are coming from on this issue. He illustrated their point by using the roofing demonstration project that was started last December. This project has produced a draft document about solutions in hazard zone jobs in this industry, but according to those who were involved in the demonstration project, the draft document makes no sense. They also indicate that with the solutions given in the draft document, they will be out of compliance with the rule. This document was shot down by the industry. The roofing group is frustrated and has used lots of resources trying to work with L&I on this project. The drywall and agricultural industries were given as other examples.

They are also concerned about the demonstration projects and determining whether or not they are successful. How do you measure success? Are educational materials widely available? Our members are not ergonomists -- they want to know what to do. They want solutions and they are not getting that from the department. Our members want low-tech solutions which are widely available. Printed material is critical and workshops are a waste of time unless they are highly targeted.

Are the requirements understandable? How do I, as an average employer, determine and measure my hand force? How do I determine to what degree my back is in? How do I measure duration? Key terms are undefined. Ninety-six percent of our employers don't have a clue about the case law. What is technological and economical feasibility? What is a reasonable determination? What is typical work? Enforcement policies don't answer these questions.

L&I can't give answers but they can certainly tell us how to do it.

Small employers are frustrated about the weight lifting issue.

Gary asked the panel, as experts in this field, how does he tell roofers or an apple orchardist how to comply with this rule?

- ❖ Mark Johnson from the National Federation of Independent Businesses (NFIB) offered their assistance as the panel deliberates on these very important issues.

## ❖ CLOSING COMMENTS

Demonstration Projects – the panel needs to provide some specific requests on more useful ways the information could be packaged. The panel needs to communicate to those involved in demonstration projects about the kind of feedback the panel would like from them, e.g., by the end of this year, a report will be issued on the status of demonstration projects. How many projects are likely to be completed in the next three months?

We need criteria for determining what is success for the demonstration projects.

Education materials available and effective.

Are requirements of the rule easily understood. What evidence shows this? Whether the rule requirements are understandable is different than education materials. How can we obtain evidence of understandability?

Enforcement: entirely a matter of process

❖ It was decided to break the work up and create subcommittees. Each of these needs to be staffed by the appropriate person who can coordinate them. (Chairs of subcommittees bolded)

❖ Demonstration Project subteam: **Claude Golden**, Gwen Malone, David Wegman

❖ Educational material: **Larry Bindner**, Jim McCauley, Susan Schurman

❖ Rule requirements and enforcement: **William Andersen**, Lee Anne Jillings, Pat Tyson

Stew Burkhammer and James Merchant will be contacted by the chairs regarding what subcommittee they would like to sit on.

Subcommittees need to identify materials they would like to receive from L&I by the end of May. These materials should be received by subcommittees before the end of June.

❖ Agenda

❖ Agenda to be determined by panel

❖ Subcommittees responsible for agenda items

❖ Meetings will be business casual

❖ Next meeting dates tentatively set by panel.

❖ July 19 and 20

❖ October 18 and 19 (to be rescheduled)

❖ January 16 and 17

❖ For interested members: the Governor's Safety and Health Conference is scheduled for September 26 and 27 this year and will be held in Seattle.

GARY SMITH: He would like to understand how the panel would like interaction with stakeholders. He would prefer having more frequent opportunities to give input rather than one block at the end of the day.

With no further business, the meeting was adjourned.